

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.No.29 of 2010

V.Subash

... Appellant/Accused

Vs

The State by Sub Inspector of Police,
Veeraganur Police Station,
Salem.

.... Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Cr.PC., to set aside the judgement passed in S.C.No.149/2008, on the file of the District Sessions Judge, Mahizha Court, Salem, dated 14.10.2009.

For Appellant : Mr.Balaji Sankara Moorthy, Amicus Curiae

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is, against the judgement of conviction and sentence, dated 14.10.2009, made in SC.No.149 of 2008, on the file of the learned District Sessions Judge, Mahizha Court, Salem, convicting and sentencing the Appellant for the offence under Section 417 of IPC to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/-, in default, to undergo three months Rigorous Imprisonment and acquitting the Appellant for the offence under Section 376 of IPC.

2. The case of the Prosecution has arisen on the basis of the complaint Ex.P1, dated 11.10.2003, given by the victim girl, PW.1, Dhanalakshmi, alleging that she was working as a Tailor and she was having relationship with the Appellant/ accused, who is the resident of the area of occurrence and that the Appellant/ accused is a married person and his wife died four years ago and that before five months from 11.10.2003, the Appellant/ accused, on the false promise to marry her, had physical relationship with her. Hence, the Appellant/ accused was charge sheeted for the offences under Sections 417 and 376 of IPC.

3. The case was taken on file in SC.No.149 of 2008, by the learned District Sessions Judge, Mahizha Court, Salem and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.10 and also marked Exs.P1 to P9 and Mos.1 and 2.

4. PW.1, is the victim girl, who gave the complaint Ex.P1. PW.2 is the mother of PW.1. PW.3 is the father of PW.1. PW.4, PW.5 and PW.7 are the residents of the area of occurrence. PW.6 is the Doctor, who examined the accused regarding his potency. PW.8 is the Sub Inspector of Police, who, on receipt of Ex.P1, had registered a case in Cr.No.245 of 2003 under Sections 417 and 376 of IPC and prepared Ex.P6, First Information Report. PW.9 is the Doctor, who examined the victim girl. PW.10 is the Inspector of Police, who conducted further investigation and filed the final report against the accused under Sections 417 and 376 of IPC.

5. Ex.P1, dated, 11.10.2003 is the complaint given, by PW.1. Ex.P2 is the requisition letter to conduct medical examination. Ex.P3, dated, 15.11.2003 is the medical certificate of the Appellant/ accused. Ex.P4, dated, 3.11.2003 is the age certificate of the accused. Ex.P5, dated, 11.10.2003 is the observation mahazar. Ex.P6, dated, 11.10.2003 is the First Information Report. Ex.P7, dated, 11.10.2003 is the requisition letter to conduct medical examination on the accused. Ex.P8, dated, 29.10.2003 is the medical certificate. Ex.P9, dated, 11.10.2003 is the rough sketch.

6. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, one Manoharan, Senior Administrative Assistant of Taluk Legal Services Authority was examined as DW.1 and the reply, dated 02.04.2004 given by the Appellant/ accused to Attur Taluk Legal Services Committee along with connected papers in L.S.A Petition 53 of 2004 was marked as Ex.D1.

7. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

8. This court heard the submissions of the learned counsel on either side.

9. The learned Amicus Curiae has assailed the impugned judgement of conviction and sentence, on the following infirmities, discrepancies and grounds:-

a. Though the Trial Court came to the conclusion that the allegations are false in respect of the charges under Section 376 of IPC, it committed an error in acting on the same false set of facts to convict the Appellant under Section 417 of IPC. The trial Court ought not to have convicted the appellant / accused for the offence under Section 417 of IPC based on the uncorroborated evidence of P.W.1, which is self contradictory in other aspects.

b. The evidence of the prosecutrix is not clear and specific and the same is suffering from material inconsistencies and contradictions with the other evidence on record. There is no evidence on record to suggest that the appellant, on the false pretext of marriage with the prosecutrix and in furtherance of his intention from the very beginning, induced her to surrender to him for sexual intercourse.

c. The accused and the victim girl were in a close relationship for several months and that the appellant / accused had informed to P.W.1 that his parents had not agreed for their marriage and even, thereafter she had continued the relationship with the appellant / accused. The statements of PW.1 in the Complaint to the police and in the complaint to the Legal Services Authority are totally contradictory.

d. The evidence of P.W.2 and P.W.3, who are the parents of P.W.1 are contradictory and did not support the case of the prosecution. Further PWs.4 and 5, who are independent witnesses, have turned hostile and that they have not supported the case of the prosecution.

10. The learned Amicus Curia for the Appellant has ultimately contended that the impugned judgement of conviction and sentence is against law, weight of evidence and probabilities of the case and that the Prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the Appellants and hence, the Appellants are entitled for acquittal. In support of his contentions, he would rely on the decision of Honourable Supreme Court rendered in the case of Tilak Raj Vs. State of Himachal Pradesh reported in (2016) 4 SCC 140.

11. The learned Additional Public Prosecutor for the Respondent would contended that the Prosecution has proved the charges levelled against the accused through the oral testimony of PW.1, victim girl and the corroborating evidence of the other witnesses and also through the medical evidence and hence, the impugned judgement of conviction and sentence warrants no interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

13. At the outset, it is pertinent to state that the Trial Court, while acquitting the appellant / accused for the offence under Section 376 of IPC, on the same set of facts, convicted the appellant for the offence under Section 417 of IPC. On an overall analysis of the evidence, both oral and documentary, it is seen that the case of the Prosecution wholly rests on the testimony of PW.1, victim girl and the evidence of PW.1 is self contradictory in other aspects. There is no evidence on record to suggest that the appellant, on the false promise to marry the prosecutrix, induced her and had sexual intercourse with her.

14. Admittedly, P.W.1 was aged 25 years at the time of occurrence and she and the appellant / accused belong to the same village and they are also residing in the same street. They were already having a close relationship for several months. It is the further evidence of P.W.1 that the appellant / accused's wife passed away four years ago and that he does not have any children. Further averment made by PW.1 in the complaint is that the appellant / accused was taking tuition for the children in that area and she believed him and was in a close relationship for several months and that the appellant / accused had informed to P.W.1 that his parents had not agreed for their marriage and even, thereafter, she had continued the relationship with the appellant / accused.

15. P.W.1 had given a petition to the Taluk Legal Services Authority, wherein she had stated that the appellant/accused and she were living as husband and wife for the past four years and that he had refused to marry her and had also treated her cruelly and thereby, she had requested the Chairman of Legal Services Authority to enquire and arrange for marriage between them and get redressal from cruelty committed on her. The appellant had also appeared before the Legal Services Authority and given a reply stating that PW.1 was black mailing him and demanding money. The appellant/accused had examined one Manoharan, Senior Administrative Assistant of Taluk Legal Services Authority, as DW.1 and marked the documents relating to enquiry, as Ex.D1. The statements of PW.1 in the Complaint to the police and in the complaint to the Legal Services Authority are totally contradictory.

16. Thus, the evidence as a whole, including the First Information Report, testimony of the prosecutrix and the story of the prosecutrix, regarding sexual intercourse on false pretext of marrying her, cannot be believed, since it is the

admitted case of the prosecutrix P.W.1 that she was in a relationship with him. Further, the evidence of P.W.2 and P.W.3, who are the parents of P.W.1 are contradictory and did not support the case of the prosecution. Further PWs.4 and 5, who are independent witnesses, have turned hostile and that they have not supported the case of the prosecution.

17. Thus, it is seen that the evidence of the prosecutrix is not clear and specific and the same is suffering from material inconsistencies and contradictions with the other evidence on record. The discrepancies in the evidence of the prosecutrix is incompatible with the credibility of her version and hence, her version has to be out rightly rejected. In the absence of nay corroboration, the evidence of the prosecutrix has to be rejected. Thus, one can infer that it is a case of consensual relationship and not an case as alleged by the Prosecution.

18. In the decision relied on by the learned Amicus Curiae, in Tilak Raj Vs. State of Himachal Pradesh reported in (2016) 4 SCC 140, it was laid that Paragraph Nos.18 to 20, it has been observed that since the Prosecution has failed to prove all the ingredients of Section 417 of IPC, the appellant cannot be convicted for the offence of cheating punishable under Section 417 IPC.

19. In so far as the conviction of the appellant under Section 417 is concerned, a close scrutiny of evidence of the prosecutrix PW.1 along with other prosecution witnesses is done by this Court.

22. Section 417 IPC prescribes punishment for the offence of cheating as defined under Section 415 IPC. Section 415 IPC reads thus:-

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section:-."

21. The ingredients required to constitute the offence of cheating have been discussed by the Honourable Supreme Court in its decision reported in 1970 2 SCC 740 (Ram Jas Vs. State of U.P) as under:-

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property ; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived ; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

22. In the case on hand, a careful reading of the evidence on record clearly shows that there is no evidence against the appellant, from which it can be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 IPC. In the complaint the victim had stated that she and the appellant/accused belong to the same street and that they were having a close relationship with each other for five months and that she is aged about 25 years and the appellant/accused is aged about 30 years and due to the relationship, the appellant/accused had stated to have told her that he would marry her and had sexual intercourse with her several times and the further averment is that he was already married and that his wife passed away four years back and that he has no children and that due to the relationship they had sexual intercourse with each other and later on the promise that he would marry her, she had succumbed to his pressure. Further averment is that prior to two months, the appellant/accused had informed her that his family members had not agreed for the marriage and thereafter, they had met at the Tuition Centre and that when they were together the villagers caught hold of them and brought them to the Village Panchayat and only after that the relationship was known to her parents and that the appellant/accused escaped from the Panchayat. Whereas, in the complaint given to the Taluk Legal Service Authority, the victim had stated that she and the appellant/accused were in a relationship with each other for four years and that they were living together as husband and wife and later, the appellant/accused committed cruelty on her and refused to marry her and thereby, she had requested to direct him to marry her. Admittedly, the victim girl is aged about 25 years and on going through the entire evidence there is no material on record to show that the appellant/accused either on the inducement or on false promise with dishonest intention cheated the victim and committed sexual intercourse with her.

For conviction of the appellant for the above said offence, it is important that all the necessary ingredients constituting an offence under the said section must be proved beyond reasonable doubt. A careful reading of the evidence on record clearly shows that there is no evidence against the appellant from which it could be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute offence under Section 415 IPC. In the instant case, the appellant cannot be convicted for the offence of cheating punishable under Section 417 IPC, since, the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt.

23. From the aforesaid facts and analysis of evidence, it is clear that the evidence of the Prosecution is neither believable nor reliable to bring home the charges levelled against the Appellant. This Court is of the considered opinion that the impugned judgement of conviction and sentence passed by the Trial Court is not based on a careful reappraisal of the evidence on record and there is no material evidence on record to show that the Appellant is guilty of the offences charged, i.e. offence of cheating punishable under Section 417 of IPC and consequently, the Appellant is entitled for acquittal.

24. In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of all the charges levelled against him. The bail bond, if any, executed by the Appellant, shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The District Sessions Judge,
Mahizha Court, Salem.
- 2.The Judicial Magistrate No.I,
Attur.
- 3.The Chief Judicial Magistrate,
salem.
- 4.The Sub Inspector of Police,
Veeraganur Police Station, Salem.

5. The Public Prosecutor,
High Court, Madras

Copy To

The Section Officer,
High Court, Madras -104.

+1cc to Mr.Balaji Sankaramoorthy, Advocate, S.R.No.14791

Crl.A.No.29 of 2010

SJ(CO)

RRS (05/04/2019)



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